

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

IRONBURG INVENTIONS LTD.,

No. 2:17-cv-01182-TSZ

Plaintiff,

**PLAINTIFF’S TRIAL BRIEF**

v.

VALVE CORPORATION,

Defendant.

1 **I. INTRODUCTION**

2 This is an action by Plaintiff, Ironburg Inventions Ltd. (“Ironburg”), to recover for the  
 3 willful infringement by Defendant, Valve Corporation (“Valve”), of Ironburg’s U.S. Patent No.  
 4 8,641,525 (“the ‘525 Patent”). The ‘525 Patent covers a novel hand-held video game controller  
 5 with back controls invented by Ironburg. The invention addressed the need for a high  
 6 performance controller that enables gamers to perform complex in-game functions with higher  
 7 speed and efficiency. Standard controllers typically provide controls on the front and top of the  
 8 controller that are operable only by the gamer’s thumb and index fingers. Ironburg developed  
 9 novel elongated controls located on the back of the controller that are operable with a gamer’s  
 10 middle fingers, regardless of hand size, that enabled the performance of complex in-game  
 11 functions more speedily and efficiently. The ‘525 Patent protects that invention.

12 From its first notice of the ‘525 Patent in March 2014 and Ironburg’s infringement claims,  
 13 Valve demonstrated disdain for the patent. Rather than respect it, Valve recklessly attacked it  
 14 both in this Court and twice through the *inter partes* review process at the PTO. Valve’s attacks  
 15 on the patent, however, were repeatedly rejected. And after each failed invalidation attempt,  
 16 Valve never reconsidered its infringement of the ‘525 Patent. Instead, Valve plowed ahead with  
 17 its infringement in total disregard of its effect on Ironburg’s business.

18 By this trial, Ironburg seeks to recover the substantial damages Valve has inflicted on  
 19 Ironburg. Ironburg is entitled to a reasonable royalty on Valve’s sales of more than 1.6 million  
 20 infringing Steam Controller products, which damages total nearly \$5 million. Because Valve’s  
 21 infringement was willful, Ironburg seeks enhanced damages under 35 U.S.C. § 284 plus  
 22 Ironburg’s reasonable attorneys’ fees and costs for a total judgment in excess of \$15 million.

23 **II. FACTUAL AND PROCEDURAL BACKGROUND**

24 **A. The Parties.**

25 Ironburg is the patent holding entity of sister operating company Scuf Gaming (“Scuf”).  
 26 Scuf sells high-performance customized gaming controllers that employ Ironburg’s patented  
 27 invention. Ironburg’s invention protected by the ‘525 Patent has had substantial commercial  
 28 success. Ironburg licenses the invention to several leading players in the video game market for

1 use in their controllers, including Microsoft Corporation and Scuf.

2 Valve is a video gaming company that develops and sells video games and operates an on-  
3 line gaming platform known as “Steam.” Valve describes its “Steam” platform as the largest  
4 digital distribution platform for gaming in the world; and Valve generates very significant annual  
5 revenues from sales of its own and others’ high margin video games. Public sources report that  
6 Valve’s annual revenues substantially exceed one billion dollars.

7 Valve entered the controller market specifically as a means to generate additional or  
8 “convoyed” sales of its highly profitable video games. Consistent with this strategy, Valve sold  
9 the infringing Steam Controller bundled with its and its partners’ video game products. Valve  
10 later determined that customers who purchased the Steam Controller typically purchased  
11 additional video game products resulting in increased revenues to Valve on top of the Steam  
12 Controller revenues themselves.

13 **B. Valve’s Infringing Product and Its Disregard for the ‘525 Patent.**

14 In 2014, Valve publicized its decision to enter the game controller market with a product  
15 known as the “Steam Controller”, a controller that would compete with Scuf’s controllers. Valve  
16 expected to profit from a its controller directly through sales of the product and through additional  
17 sales of highly profitable video games. Valve was to sell the controller both as a standalone  
18 product and bundled with its video game products.

19 At the time the ‘525 Patent issued, Valve was still designing the “Steam Controller”.  
20 Valve initially publicized in 2014 a beta version and included pictures on its website that  
21 demonstrated that the controller infringed at least claim 1 of the ‘525 Patent. In March 2014,  
22 Ironburg notified Valve of the ‘525 Patent and demanded that it cease its infringement in  
23 connection with the Steam Controller. Valve subsequently made changes to the Steam Controller  
24 but none of those changes avoided infringement. Instead Valve brazenly copied additional  
25 features from the ‘525 patent and made other changes to the released version of the Steam  
26 Controller based on the feedback of users who, not surprisingly, wanted the benefits of Ironburg’s  
27 patented inventions. Valve has admitted that it made no attempt to design around the ‘525 Patent  
28 even after being notified of its infringement. As a result, all copies of the Steam Controller that

Valve sold from 2015 to the present infringe the ‘525 Patent.

After Valve ignored Ironburg’s repeated demands to cease its infringement, Ironburg filed this suit. In response, Valve mounted a years-long campaign to invalidate the claims in the ‘525 Patent both in this Court and twice by *inter partes* proceedings (“IPR”) before the Patent Trial and Appeals Board (“PTAB”). Valve’s efforts were unsuccessful. Both the PTAB and this Court have rejected Valve’s contentions that the ‘525 Patent is invalid. This Court has further ruled, based on the PTAB’s decisions, that Valve is estopped to raise any of its invalidity defenses. As a result, the sole issues to be tried in this action are whether the Steam Controller infringes the asserted claims of the ‘525 Patent (claims 2, 4, 7, 9, 10, 11 and 18), whether Valve’s infringement was willful and the amount of damages to which Ironburg is entitled for such willful infringement.

### **III. DISCUSSION**

#### **A. The Steam Controller Infringes the ‘525 Patent**

In simple terms, the ‘525 Patent improves upon video game controllers by adding thin, flexible, elongated controls to the back of the controller. In the asserted ‘525 Patent claims, the controls are “inherently resilient and flexible” and extend “substantially the full distance” from the top edge of the back of the controller to the bottom edge of the back of the controller to enhance gameplay. Valve’s Steam Controller incorporates all of the claimed limitations.

The infringement trial will naturally be focused on Claim 2 as Valve has no prior art invalidity defenses to any of the claims and all of the other asserted claims depend from Claim 2.<sup>1</sup>

Claim 2, which depends from Claim 1, is set forth here with claim terms underlined:

1. A hand held controller for a game console comprising:

[a] an outer case comprising a front, a back, a top edge, and a bottom edge, wherein the back of the controller is opposite the front of the controller and the top edge is opposite the bottom edge; and

[b] a front control located on the front of the controller;

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<sup>1</sup> Valve’s Steam Controller infringes each of the asserted claims of the ‘525 Patent: Dependent Claims 2, 4, 7, 9, 10, 11 and 18.

[c] wherein the controller is shaped to be held in the hand of a user such that the user's thumb is positioned to operate the front control; and

[d] a first back control and a second back control, each back control being located on the back of the controller and each back control including an elongate member that extends substantially the full distance between the top edge and the bottom edge and is inherently resilient and flexible.

[e] 2. The controller of claim 1, further having a top edge control located on the top edge of the controller and wherein the controller is shaped such that the user's index finger is positioned to operate the top edge control.

The accused Valve Steam controllers meet all of the limitations, including case elements (elements [a]-[c] and [e]) and the rear control items (element [d]) that are at the heart of the '525 Patent inventions.

The following images show the various rear controls on the accused Steam Controller. First, Valve's initial publicized prototype with two back controls is shown to the right of the controller depicted in the '525 Patent. As can be seen, the prototype has left and right back controls. These controls correspond to controls 11 in the patent Figure 2. As also can be seen, the controls are comprised of elongate members that extend "substantially the full distance" from the top edge of the back of the controller to the bottom edge of the back of the controller as required by the claims of the '525 Patent. They are nearly identical to the controls shown in the preferred embodiment of the patent.

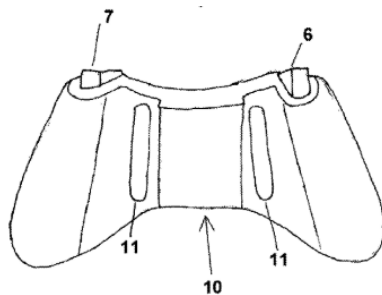


Figure 2



Next, the version of the Steam Controller that Valve released and offered for sale (the accused device at issue in this litigation) is shown to the right of the controller shown in the '525

Patent. As can be seen, the accused Steam Controller has two elongate members shaded in yellow for demonstrative purposes that extend “substantially the full distance” from the top edge of the back of the controller to the bottom edge of the back of the controller as required by the claims of the ‘525 Patent. Those elongate members are integrated into a thin, flexible plastic battery cover mounted in a recess on the back of the controller.

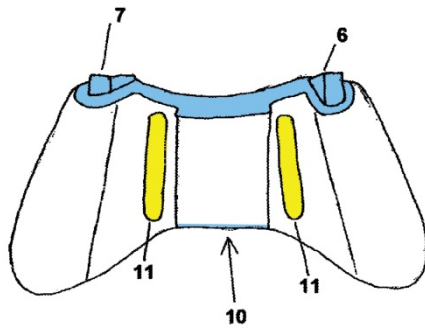


Figure 2



In the next image red vertical lines are added to the image of the Steam Controller to show a distance between the top and bottom edges of the back of the controller. As can be plainly seen, the elongate members extend substantially the full distance between the top and bottom edges as required by the claims. Indeed, on the accused Steam Controller released by Valve after receiving notice of the patent, they were elongated further to extend beyond the bottom edge of the controller at the medial (middle) portion (shaded in blue here for demonstrative purposes) and also beyond (above) portions of the top edge (the top edge is also shaded in blue in various images). They are elongated more than the controls on the back of the controller in the preferred embodiment of the patent. There, the controls begin near the top edge of the controller and extend substantially down the back of the controller, but not beyond the bottom edge at the medial portion (10) of the controller.



These figures likewise show top edge controls located on the top edge of the controller as

1 called for by Claim 2. There can be no legitimate claim that the Steam Controller does not  
2 infringe the ‘525 Patent.

3 **C. Ironburg is Entitled to Royalty Damages of Nearly \$5 Million.**

4 Under 35 U.S.C. § 284, Ironburg is entitled to “damages adequate to compensate for the  
5 infringement, but in no event less than a reasonable royalty for the use made of the invention by  
6 the infringer, together with interest and costs as fixed by the court.” Ironburg’s damages expert,  
7 Kenneth Serwin, Ph.D., has opined that a reasonable royalty rate on sales of the infringing Steam  
8 Controller for the first two years of sales is between \$2.68 and \$3.75 per unit for stand-alone  
9 controller sales and between \$2.45 and \$3.43 per unit for bundled controller sales. For Steam  
10 Controller sales after the first two years, Dr. Serwin has opined that the reasonable royalty rate is  
11 between \$2.39 and \$3.35 per unit and between \$2.05 and \$2.87 per unit for stand-alone and  
12 bundled units respectively. Ironburg’s controller expert, Garry Kitchen, will testify that based  
13 Ironburg’s license of the ‘525 Patent to Microsoft and other factors, the higher of Dr. Serwin’s  
14 royalty range should apply to Valve’s Steam Controller sales. The foregoing per unit royalty will  
15 be applied to more than 1.6 million Steam Controller units sold by Valve through December 31,  
16 2019 for total royalties owed of no less than \$4.74 million.

17 **D. Ironburg Is Entitled to Enhanced Damages for Valve’s Willful Infringement**  
18 **and Egregious Conduct.**

19 Ironburg is entitled to increased or enhanced damages under 35 U.S.C. § 284 because  
20 Valve’s infringement has been willful and its conduct has been egregious. Ironburg first wrote to  
21 Valve and provided notice of the ‘525 Patent and Ironburg’s infringement claims on March 7,  
22 2014. Valve’s General Counsel, Karl Quackenbush, admitted that he received Ironburg’s letter in  
23 March 2014 and became aware of the ‘525 Patent at that time. Shortly after receiving the letter,  
24 Mr. Quackenbush had three calls with Ironburg and its counsel between March and April 2014,  
25 including an April 2014 call with Ironburg’s principal, Duncan Ironmonger. In that April 2014  
26 call, Mr. Ironmonger notified Mr. Quackenbush that Valve’s Steam Controller product would  
27 harm the controller business of Ironburg’s parent, Scuf Gaming. Mr. Quackenbush testified as  
28 follows regarding his April 2014 call with Mr. Ironmonger:

1 Q. And what do you recall Duncan [Ironmonger] to be saying?

2 A. He was pretty exercised. He was really emotional. He said something  
3 about “Your controller is going to really hurt my business.” And I responded that  
4 we had – it was sort of an apples and oranges thing or different platforms, different  
customers. He said something about patents being the crown jewels of his  
company, or words to that effect. And I expressed my viewpoint about that.

5 Q. What was the viewpoint you expressed?

6 A. I said “I don’t think patents are any operating company’s crown jewels.” I  
7 think I said “If you have good products and good customers that’s your crown  
jewels,” or words to that effect.

8 During the March 2014 timeframe, Messrs. Ironburg and Quackenbush also discussed  
9 Valve licensing Ironburg’s patented technology. Mr. Quackenbush made it clear that Valve was  
10 not prepared to pay Ironburg anything more than a “modest one-time payment,” described as “an  
11 under six figure amount.” At the same time, Valve never provided a substantive response to the  
12 March 2014 letter.

13 Despite Valve’s knowledge of the ‘525 Patent in 2014 and Ironburg’s infringement  
14 claims, Mr. Quackenbush admitted that Valve made no changes to the Steam Controller in  
15 response to the March 7, 2014 letter. Mr. Quackenbush also confirmed that Valve made no  
16 attempt to design around the ‘525 Patent in connection with the Steam Controller Product that it  
17 released. Although Valve contends that it consulted with counsel regarding Ironburg’s pre-suit  
18 claims, Valve will not offer at trial any opinion of counsel to defend against Ironburg’s claims of  
19 willful infringement.

20 Ironburg sent Valve a second cease and desist letter on December 3, 2015, after the first  
21 sale of the Steam Controller. Mr. Quackenbush admitted that Valve made no changes to the  
22 Steam Controller product in response to that letter. Mr. Quackenbush also admitted that he  
23 received Ironburg’s December 2015 letter and had a follow up call with Ironburg’s lawyer and  
24 Ironmonger. In that call, Mr. Quackenbush made clear his view that he had little respect for  
25 Ironburg’s patents. Mr. Quackenbush warned Ironmonger “When you start a patent case, really  
26 any intellectual property case like this, you put your – if you’re saying this is important IP to you,  
27 you’re putting it at risk and it might end up being smaller than when you started.”

28 Consistent with Mr. Quackenbush’s threat, Valve’s strategy from 2014 forward has been



1 to deny the validity of the ‘525 Patent and to attack it by any means possible, including through  
2 the IPR process at the PTAB. But even the PTAB’s Final Decision finding the claims asserted in  
3 this action to be patentable failed to deter Valve’s willful infringement. Rather than acknowledge  
4 the validity of the patent, Valve was undeterred and plowed ahead with its sales of its infringing  
5 product. Mr. Quackenbush confirmed that he was aware of the PTAB’s decisions and as General  
6 Counsel declined to reassess Valve’s continued sales of the Steam Controller in light of the  
7 PTAB’s final decisions. Valve’s strategy has now backfired.

8 Valve ultimately decided to stop manufacturing the Steam Controller product but even  
9 that decision had nothing to do with its ongoing infringement of the ‘525 Patent. Mr.  
10 Quackenbush admitted that Ironburg’s infringement claims had no bearing on Valve’s decision to  
11 stop manufacturing the Steam Controller. Mr. Quackenbush further admitted that Valve never  
12 considered stopping sales of the Steam Controller product in response to Ironburg’s infringement  
13 claims. Instead, Valve continued to sell off its inventory of Steam Controllers into December  
14 2019.

15 In short, Valve had notice of the ‘525 Patent in March 2014 and was aware of Ironburg’s  
16 contentions that Valve’s controller product infringed the ‘525 Patent. Nevertheless, with full  
17 knowledge of the Patents-in-Suit, Valve copied many of the inventions disclosed in the ‘525  
18 patent and deliberately released and sold its infringing controller product incorporating those  
19 patented inventions without securing a license in 2014 or at any time thereafter. Valve admits  
20 that it made no changes to the Steam Controller in response to Ironburg’s concerns and made zero  
21 attempt to design around the ‘525 Patent. The fact that Valve made changes between the original  
22 and released version of the Steam Controller but failed to design around the claimed inventions  
23 only serves to highlight that Valve’s infringement was deliberate. *See Milwaukee Electric Tool*  
24 *Corp. v. SnapOn Inc.*, 288 F. Supp. 3d 872, 887 (E.D. Wis. 2017) (Defendant “declined to take a  
25 license and made no changes to its product offerings to accommodate the possibility of  
26 infringement” but instead “carried on years of lucrative infringing sales after failing to respond to  
27 the ... licensing letter with a minimally adequate analysis of whether a license would be  
28 necessary.”)

Valve also never provided a substantive response to Ironburg’s March 2014 letter which is further evidence of willfulness. *See Golden Blount v. Robert H. Peterson Co.*, 438 F.3d 1354, 1370 (Fed. Cir. 2006) (Defendant “demonstrated a cavalier attitude toward Golden Blount’s patent rights from the facts that Peterson did not respond substantively to Golden Blount’s notice letters”); *Arctic Cat Inc. v. Bombardier Recreational Products Inc.*, 198 F.Supp.3d 1343, 1352 (S.D. Fla. 2016), *aff’d*, 876 F.3d 1350 (Fed. Cir. 2017) (“[D]efendant had been selling potentially infringing products across its entire product line for half a decade”; defendant “did not voluntarily cease making or selling the infringing products at any point or take steps to implement a non-infringing alternative”; and instead “resorted to hoping that [patentee] didn’t care about these patents anymore.”). In short, Valve “acted despite a risk of infringement that was either known or so obvious that it should have been known to the accused infringer.” *See American Technical Ceramics*, 2018 WL 1525686, \*14 (“Viewing this evidence in the light most favorable to plaintiffs [e.g., defendant’s pre-suit knowledge of the patent] and drawing all inferences in their favor, the court cannot conclude at the summary judgment stage that ... defendant did not act with sufficient culpability to warrant enhanced damages under 35 U.S.C. § 284.”)

Because Valve’s infringement was willful, Ironburg is entitled under 35 U.S.C. 284 to an amount up to three times the amount of the reasonable royalty damages.

#### **D. Ironburg Is Entitled to Its Attorneys’ Fees in This Exceptional Case.**

Under 35 U.S.C. Section 285, the court may award reasonable attorneys’ fees to the prevailing party in exceptional cases. An “exceptional case” is simply one that “stands out from others with respect to the substantive strength of a party’s litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated.” *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749 (2014). A district court has broad discretion in determining exceptionality, and such determinations are made on a case-by-case basis, considering the totality of circumstances.

Factors considered in the “exceptional case” analysis include frivolousness, motivation, objective unreasonableness with respect to the factual and legal components of the case, and the need for compensation and deterrence. A party’s unreasonable conduct, which may not be

1 independently sanctionable, may still create an exceptional case if the movant establishes that the  
 2 nonmovant subjectively acted in bad faith or pursued exceptionally meritless claims. The court  
 3 may find a case to be exceptional even in the absence of bad faith. An award of attorneys' fees  
 4 under Section 285 is often appropriate where the jury has found willful infringement.

5 Here, for many of the same reasons, that Ironburg is entitled to a finding of willful  
 6 infringement, Ironburg also is entitled to an award of attorneys' fees. For years, Valve has  
 7 pursued meritless challenges to the validity of the '525 Patent. Even after the PTAB and Federal  
 8 Circuit rejected those challenges, Valve continued its infringing sales of the Steam Controller  
 9 product. Because this is an exceptional case, Ironburg should be entitled to an award of fees in  
 10 addition to the damages above.

11 DATED: February 28, 2020

12 **MANATT, PHELPS & PHILLIPS, LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 28, 2020, I served the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

/s/ Robert D. Becker  
Robert D. Becker

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